Supreme Court, U.S.
FILED
FEB 2 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1401

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

Thomas R. Angel and Loretta C. Angel,

petitioners

vs.

Louis H. Renn

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
FOURTH APPELLATE DISTRICT

This Petition is taken pursuant to *Section 1257(3) of Title 28 of the United States Code.*

Thomas R. Angel and
Loretta C. Angel
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Petitioners pro se

QUESTIONS PRESENTED

1. Have constitutional rights been violated by California Courts in their determination against law that laches and statutes of limitations are applicable to judgments void for a lack of jurisdiction?

2. Are sanctions permitted without explanation and against statute?

All parties appear in the caption of the case in the United States Supreme Court.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY and CONSTITUTIONAL PROVISIONS INVOLVED . . 2

STATEMENT OF CASE 4

1. Proceedings in the Courts below 4
2. Presentation of Question to Courts below 10

REASONS FOR GRANTING WRIT . . . 26

1. To insure public trust in the protections afforded under the *Fourteenth Amendment of the United States Constitution* . 26

CONCLUSION 28

APPENDICES

A - Denial of Petition for Review by the California Supreme Court No. D008095-S007874
B - Denial of Petition for rehearing by the Court of Appeal, Fourth Appellate District, Division one No. D008095
C - Denial of Appeal by the Court of Appeal, Fourth Appellate District, Division one, No. D008095
D - Order Denying Motion to Vacate Void Judgment for lack of jurisdiction and for equitable relief from Void Judgment [CCP §473 and CCP §1916] Superior Court No. N8598
E - Judgment No. N8598

TABLE OF AUTHORITIES

Page

United States Constitution

Fourteenth Amendment of the United States Constitution 2,14,16,18,26&29

California Civil Code

Civil Code §1550 . . . 3&15

Civil Code §1565 . . . 3&15

California Civil Code of Procedure

CCP §128.5 . . . . 3&26

CCP §473 . . . . 3,13&21

CCP §1916 . . . . 3&21

California Case Law

Burgess v California Mut. Bldg. & Loan Assn. 210Cal 180 (1930) . . . 14

Cadenasso v Bank of Italy (1932) 214Cal 562, 569, 6P2d944 21&25

County of Ventura v Tillett (1982) 133CalApp3d105, 110 . . 20

De la Vigne v Department of Motor Vehicles (1969) 272CalApp2d 820 . 19

Durbin v Hillman (1920) 50CalApp377, 379, 195P274 . 22

Estate of Bodger 128CalApp2d710, 714 (1954) . 16

Estate of Poder (1969) 274CalApp2d786, 790, 79CalRptr484 10

Harris v Spinali Auto Sales Inc. (1962) 202CalApp2d215 . . . 23

Hayashi v Lorenz (1954) 42Cal2d848, 851, 271P2d18 . 10

Jones v World Life Research Institute (1976) 60CalApp3d836 . 19

Knowlton v Mackenzie (1895) 110Cal 183, 42 P 580 . . 17

Los Angeles v Morgan (1951) 105CalApp2d726, 732 . . 10

TABLE OF AUTHORITIES CONTINUED

Page

Mattison v Lichlyter
(1958) 162 CalApp2d60,63, 327P2d599 17

Olivera v Grace
(1942) 19Cal2d570, 575, 122P2d 564 22

People v Greene
(1887) 74Cal 400, 403, 16P197 . 22

People's Ditch Co. v Fresno Canal and Irriq. Co. 152Cal 87 (1907) . 15

People v Wilson
(1969) 271CalApp2d60 . . . 19

Shriver v Kuchel
113CalApp2d421 (1952) . . . 15

Sullivan v Sullivan
(1967) 256CalApp2d301, 304, 64CalRptr82 . . . . 10&21

Traub Co. v Coffee Break Serv., Inc. (1967) 66Cal 2d368, 371, 57Cal Rptr 846, 425P2d790 . . 20

Vasquez v Vasquez
(1952) 109CalApp2d280 . . 19

Wuest v Wuest
(1942) 53CalApp2d339, 345 . 19&21

OPINIONS BELOW

Judgment N8598 was entered in Judgment Book 1154, page 483 on October 20, 1978 and is reproduced as Appendix "E" to this petition.

On May 2, 1988, and pursuant to *CCP §473 and CCP §1916,* petitioners moved Superior Court for an order vacating void judgment for lack of jurisdiction and for equitable relief from void judgment. On May 12, 1988 such motion was denied and such denial is set forth herein as Appendix "D".

Petitioner's appeal thereto, 4 Civil No. D008095, was denied by the Court of Appeal on October 11, 1988, and such denial is reproduced as Appendix "C" to this petition. Petitioner's Petition for a rehearing by the Court of Appeal was denied on October 26, 1988, and is reproduced as Appendix "B" to this Petition.

Petitioner's petition for Review by the California Supreme Court was denied January 4, 1989, and is reproduced as Appendix "A" to this petition.

JURISDICTION

The ruling of the Supreme Court of the State of California was entered January 4, 1989. This Court has jurisdiction under *United States Code, Title 28 §1257(3).*

STATUTORY and CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment of the Constitution of the United States, Section 1 in relevant part provides:

> "No state shall deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Civil Code of Procedure Section 473 in relevant part provides:

> "The court may, . . . on motion of either party after notice to the other party, set aside any void judgment or order."

California Civil Code of Procedure Section 1916 in relevant part provides:

> "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, or collusion between the parties, or of fraud in the party offering the record, in respect to the proceeding."

California Civil Code Sections 1550 and 1565 in relevant part provide:

> "Consent is essential to the existence of a contract, and it must be free, mutual, and communicated by each party to the other."

California Civil Code of Procedure Section 128.5(c) in relevant part provides:

> "An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstance justifying the order."

STATEMENT OF THE CASE

1. Proceedings in the Courts Below:

This lawsuit envolves 5 causes of action, Breach of an Oral Contract, Breach of a Written Contract, Fraud, Negligent Misrepresentation, and False Promise.

(* CAA pages 45 thru 56)

While Angels were not present in Court, Judge Froehlich made the terms of settlement in case N8598 despite Angels attorney having informed him, in the presence of opposition counsel, that such terms were in direct opposition to Angels specific instruction. Having made the terms of settlement in such fashion, Judge Froehlich orchestrated the falsification of the reporter's transcript to read that such settlement had been discussed both face-to-face and telephonically with Angels. (CAA pages 61 thru 73)

* Current Appellant's Appendix referred to herein as CAA

Pursuant to such settlement, Judgment was entered October 20, 1978 in judgment book 1154, page 483. (CAA pages 59 & 60) As such judgment sets forth, Angel's causes herein for Fraud, Negligent Misrepresentation and False Promise were not heard, and have never been heard in any court.

Angels moved to disqualify trial Judge Froehlich for cause on September 22, 1980. (CAA pages 61 thru 71) Documentation contained in such statement was a letter dated September 29, 1978 to Angels from their attorney, Kevin Midlam, wherein Midlam writes as follows:

> "In compliance with your agreement in our last phone conversation on September 26, I again appeared in court on September 27, 1978 and discussed the matter in the presence of Mr. Clark with the court, concerning my observations and opinions, and advised the court of our willingness to accept a settlement in the amount of $2,000.00. In connection with the payment of such, I was advised by Mr.

> Clark that the cash was not available, and that payment would have to be contingent upon the sale of the property which was the subject of the litigation. I advised the court that you had not authorized me to accept such an offer, but rather by way of cash."
> "After further discussion the court recommended, and Mr. Clark accepted on behalf of Mr. Renn, that the $2000. be reduced to a promissory note bearing interest in the amount of 10% secured by a deed of trust on Parcel No. 1 of Mr. Renn's property, for a term of one year, either to be paid in full plus interest at the time of sale, or payable in full plus interest at the conclusion of one year." (CAA pages 65 & 66)

Also set forth in such statement is that Loretta Angel, on November 17, 1978, showed trial Judge Froehlich the aforementioned letter. Froehlich, after reading the letter, stated, "Well, it sounds like something I might have said." (CAA page 62, lines 8-11)

Additional documentation in such statement included deposition testimony by Renn's attorney, Russell Clark, wherein Clark testifies as follows:

> "My recollection would be that the court did recommend that the case be settled on the terms that were set forth in the stipulation on the record." (CAA page 67, lines 5-7)
> "There was a discussion, to the best of my recollection, either in chambers or informally at side bench, in which myself, Judge Froehlich, and Mr. Midlam, participated concerning a resolution of the remaining portions of the litigation. It was my opinion that the case had been substantially, if not totally, resolved as a result of the ruling of the court the previous day, and I reflected that opinion to the court." (CAA page 67, lines 16-23)

However, as set forth in such statement, the reporter's transcript of proceedings on September 27, 1978 quotes Angels attorney as follows:

> "I have previously discussed with them (Angels), both face-to-face and telephonically, the proposed settlement." (CAA page 68, lines 10-11)

On September 24, 1980, Judge Froehlich responded to Angels statement of disqualification. (CAA pages 72 and 73) In such answer, Froehlich states as follows:

> "I unequivocally deny that on the basis of such factual material, whether or not true, or on any other basis known to me, I am prejudiced against the Angels or their counsel or their cause, and further state that there is no basis for my disqualification to hear post-trial motions in the said matter." (CAA pages 72 & 73)

Pursuant to Angels lawsuit No. N14705 to set aside judgment N8598 as rendered due to extrinsic fraud on the grounds that attorney Kevin Midlam had sold out their cause to defendant Renn, Renn brought a lawsuit against Angels for Malicious Prosecution and intentional infliction of Emotional Distress. Pursuant to such lawsuit, Renn was awarded $154,331.13 on March 9, 1984. (CAA page 74) After garnishing the wages of Thomas R. Angel, the total yet unpaid under such judgment is $210,810.68. (CAA page 97 lines 12 & 13)

On May 2, 1988, Angels moved to set aside judgment N8598 as void for lack of

jurisdiction pursuant to *CCP §473* and *CCP §1916* and for equitable relief from void judgment. (CAA pages 30 thru 95 and pages 132 thru 152) Such issue has never been determined by any court. Trial court gave no reasons for denying such motion and imposing sanctions thereto pursuant to *CCP §128.5*. (CAA pages 154 & 155) Angels have previously been sanctioned in this case in the amount of $875.00 for attempting to obtain the trial court's reasons for decision. (Petition for rehearing, Court of Appeals, Appendix "F")

In decision of the Court of Appeals, reason for denial is set forth as follows:

> "If, as they allege in their present briefs, they have never raised the issue of lack of Jurisdiction, having provided no excuse for failing to do so, they have not acted with deligence after discovery of the facts. For this reason alone, the trial court did not err in denying equitable relief." (Appendix "C", page 4, lines 5-9)

2. Presentation of Question to Courts Below:

In accord with *Hayashi v Lorenz* (1954) 42 Cal 2d 848, 851, 271 P 2d 18, "A judgment which is void on its face because of a lack of jurisdiction to render it may be set aside at any time after its entry."

In accord with *Los Angeles v Morgan* (1951) 105 Cal App 2d 726, 732, Where an action has equitable relief from a void judgment as its objective, the statute of limitations and laches may not be invoked as a defense."

In accord with *Sullivan v Sullivan* (1967) 256 Cal App 2d 301, 304, "Court has inherent power to set aside a void judgment at any time."

In accord with *Estate of Poder* (1969) 274 Cal App 2d 786, 790, 79 Cal Rptr 484, "Statutes of limitations do not protect a void judgment."

In addition to equitable relief, Angels seek relief pursuant to *CCP §473* and *CCP §1916.* (CAA pages 30 thru 32)

The Court of Appeals supports their decision regarding judgment void for a lack of jurisdiction with only 2 cases. Such 2 cases are set forth as follows:

> "A Court may grant relief under its inherent equitable power if, due to fraud of the opponent or by his own mistake, the aggrieved party has been deprived of a fair adversary hearing." (De Mello v Souza (1973) 36 Cal. App. 3d 79, 85; Hammell v Britton (1941) 19 Cal. 2d 72, 82-83.) (Appendix "A" page 3, lines 25-29)

However, Angels do not allege fraud by the opponent, nor do Angels allege a mistake by themselves as the grounds rendering judgment N8598 void for a lack of jurisdiction. Fraud by an opponent or mistake by a party does not render judgments void for a lack of jurisdiction. It is Court action, not party action, that rendered judgment N8598 void - such action

being that while Angels were not present in Court Judge Froehlich made the terms of settlement herein despite Angels attorney having informed him, in the presence of opposition counsel that such terms were in direct opposition to Angels specific instruction. (CAA pages 30 thru 95 and pages 132 thru 152)

Angels have been deprived of all and any adversary hearing as to causes 3, 4 and 5 herein, and have been deprived of appeal rights as to causes one and two pursuant to the Court's actions rendering judgment N8598 void.

De Mello v Souza supra, 36 Cal App 3d at p. 85 is quoted in Decision of Court of Appeals as follows:

> "The aggrieved party in addition must show a satisfactory excuse for not having made his claim or defense in the original action and diligence in seeking relief after discovery of the facts." (Appendix "A", bottom page 3 and top of page 4)

De Mello v Souza, supra, page 80, is not applicable to void judgments in that such case asserts error only, being an oversight by the arbitrator, not a lack of jurisdiction of the arbitrator. While *CCP §473*, infra provides relief from error within defined time limitations, *CCP §473* also provides relief from void judgment without any restriction as to time limitations.

Hammell v Britton, supra, page 75 is not applicable to void judgment in that such case asserts grounds of fraud and collusion by the opposing party, not a lack of the Court's jurisdiction as is the case herein.

The two cases relied upon in decision by the Court of Appeals in affirming the trial Courts Ruling are clearly not applicable to judgments void for a lack of jurisdiction. Further, the law is clear

regarding the setting aside of a judgment void for lack of jurisdiction in that neither laches nor statutes of limitations apply.

Angels, as any litigant would be, are entitled to equal protection of the law and due process under the *Fourteenth Amendment of the Constitution of the United States.* Decision by the Courts below herein constitute a clear violation of such rights.

The opposition and the Court, having original knowledge that Judgment N8598 is void for a lack of jurisdiction, are estopped to assert and invoke laches.

That judgment N8598 is void for a lack of jursisdiction is clearly set forth in law as follows.

In accord with *Burgess v California Mut. Bldg. & Loan Assn.*, 210 Cal 180 (1930), "The Court cannot make contract of compromise and satisfaction for parties."

In accord with *People's Ditch Co. v Fresno Canal and Irriq. Co.*, 152 Cal 87 (1907), "It is the duty of the court to enter judgment in accordance with the stipulation of the parties, but this is the limit of its power in the matter. If the agreement is not full enough to dispose of all the claims or rights in the subject matter, the court has no power to supplement or construe it by the insertion of extraneous matter in the decree. A failure of the stipulation fully to express the intention of the parties must be corrected by appropriate action." In the instant case, Judge Froehlich made the terms of settlement knowing Angels specifically rejected such terms.

In accord with *Shriver v Kuchel*, 113 Cal App 2d 421 (1952), "Compromise agreements are governed by the legal principles applicable to contracts generally." In accord with *Civil Code §1550 and §1565*, "Consent is essential to

the existence of a contract, and it must be free, mutual, and communicated by each party to the other." Angels have never consented to the settlement set forth in judgment N8598.

Additionally, Settlement N8598 is absent any language addressing the debt Renn owed Angels pursuant to Angels having incurred expenses in grading a pioneer road and digging a seepage pit on the subject property (CAA pages 84 thru 89), a debt in the amount of $1300.00 that Renn admits owing in his signed memo of May 29, 1977. (CAA page 75)

In accord with *Estate of Bodger*, 128 Cal App 2d 710, 714 (1954), "It is a violation of due process when the court infringes upon petitioner' freedom of contract which is an excess of the Courts' Jurisdiction."

Judge Froehlich's actions herein constitute a violation of due process under the *Fourteenth Amendment of the United States Constitution.*

In accord with *Mattison v Lichlyter* (1958) 162 Cal App 2d 60, 63, 327 P 2d 599, "Void Judgments based on Jurisdictional defect is violation of public policy."

In accord with *Knowlton v Mackenzie* (1895) 110 Cal 183, 42 P 580, "When party and court are aware that attorney for opposing party entered into stipulation in direct opposition to client's wishes, court should not act thereon, nor can party enforce judgment rendered by reason thereof." The circumstances in the instant case are much worst than those set forth in *Knowlton v Machenzie*, supra. While in the presence of counsel for both plaintiffs and defendant, Judge Froehlichmade the terms of settlement after being specifically informed by Midlam, in the presence of Renn's counsel, that such terms were specifically against Angel's wishes. This, standing alone, rendered judgment N8598 Void. The wrong

was then compounded when Judge Froehlich orchestrated the falsification of the reporter's transcript in an effort to conceal the truth of what had actually taken place. That there was extrinsic fraud in the concealment of what happened in settlement N8598 is asserted in addition to that conduct which does without extrinsic fraud render judgment N8598 void for lack of jurisdiction. Of the three participants, two attorneys and one judge, only the judge had authority over the reporter's transcript, and the responsibility pursuant to his office to insure an accurate court record. Judge Froehlich's actions constitute a fundamental violation of due process under the *Fourteenth Amendment of the United States Constitution*. Pursuant to Judge Froehlich's actions, Angels have never been permitted appeal of causes one and two, and have never been permitted a

hearing on causes three, four and five in any court. (CAA pages 59 & 60)

In accord with *Wuest v Wuest* (1942) 53 Cal App 2d 339, 345, "Action or motion in equity to vacate a judgment as properly instituted on the grounds that the judgment is void due to the coercive manner in which the trial Judge insisted that the aggrieved party sign a stipulation to dispose of community property."

In accord with *De la Vigne v Department of Motor Vehicles* (1969) 272 Cal App 2d 820, "A void Judgment is one of no validity or effect, unenforceable and of no legal force."

In accord with *People v Wilson* (1969) 271 Cal App 2d 60 and *Vasquez v Vasquez* (1952) 109 Cal App 2d 280, "In rendering judgment, Court must remain within its Jurisdiction and power, and where it grants relief which it has no power to grant, judgment is void."

In accord with *Jones v World Life*

Research Institute (1976) 60 Cal App 3d 836, "A judgment is made void for an excess of jurisdiction and Trial Court is under duty to render a judgment that is in exact comformity with an agreement or stipulation of parties and interpretation of contracts and court may not add to the provision thereof, insert a term not found therein, or make a new stipulation for parties." In accord with *County of Ventura v Tillett* (1982) 133 Cal App 3d 105, 110, "Judgment is void on its face if court which rendered judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which court had no power to grant." Judgment N8598 is void on its face. The statement of Disqualification of Judge Froehlich is not outside the record and was filed as to case N8598 and N14705. (CAA page 61) In any case, and in accord with *Traub Co. v Coffee Break Serv., Inc.* (1967) 66 Cal 2d 368, 371, 57 Cal Rptr 846, 425 P 2d 790, "If a judgment is void

on its face for lack of jurisdiction, the judgment is a nullity and subject to collateral attack."

In accord with *CCP §473*, "The court may, . . . on motion of either party after notice to the other party, set aside any void judgment or order." In accord with *CCP §1916*, "Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, or collusion between the parties, or of fraud in the party offering the record, in respect to the proceeding." It is undenied in this case that counsel for both plaintiffs and defendants and the trial judge knew the record being offered was fraudulent.

In accord with *Cadenasso v Bank of Italy* (1932) 214 Cal 562, 569, 6 P 2d 944; *Sullivan v Sullivan* (1967) 256 Cal App 2d 301, 304, 64 Cal Rptr 82 (equitable relief); *Wuest v Wuest* (1942) 53 Cal App 2d 339, 345, 128 P 2d 934, "The grounds upon which such motion or action is

properly instituted usually involve some type of jurisdictional defect, . . . but may also include such jurisdictional deficiencies as . . . improper action by the trial judge amounting to coercion of a party in stipulating to a judgment."

In accord with *Olivera v Grace* (1942) 19 Cal 2d 570, 575, 122 P 2d 564, "Equity's jurisdiction to interfere with final judgments is based on the absence of a fair adversary hearing at law in the original action." As a result of the judge's actions in Settlement N8598,Angels have been denied the right of appeal of causes one and two, and have never been permitted a hearing in any court on causes three, four and five. (CAA pages 59 & 60)

In accord with *People v Greene* (1887) 74 Cal 400, 403, 16 P 197, "A judgment that is void for lack of jurisdiction may, on motion, be set aside by the court which rendered it."

In accord with *Durbin v Hillman* (1920)

50 Cal App 377, 379, 195 P 274, "A void contract is a nullity. It cannot be given any effect, and it cannot be ratified." Judgment N8598 being a settlement, and settlements being governed by the law of contracts, and there being no consent in settlement N8598, judgment N8598 is a nullity, a nothing.

The court of appeal by invoking laches and/or limitations against Angels have specificially excluded res judicata. It simply is impossible to be too late in presenting an issue already presented and determined. However, and in accord with *Harris v Spenali Auto Sales Inc.,* (1962) 202 Cal App 2d 215, "A Judgment is not res judicata as to issues not disposed of and interpretation of stipulation is governed by rules applying to interpretation of contracts, and court may not add provisions or terms, or make new stipulation for parties."

Record herein establishes that there has been no prior court determination as

to whether or not judgment N8598 is void for a lack of jurisdiction.

Cause N8598 is not only meritorious, but is a winning case under law.

Angels evidence at trial of N8598 establishes that Angels had, under applicable State law, a written contract for purchase of the subject property. (CAA pages 75 thru 89)

First document is a memo signed by Louis Renn on May 29, 1977. Such Memo states:

> "Should I, Louis Renn, for any reason beyond my control not be able to sell my property as per our agreement of April, 1977 to Tom Angel for $80,000.00
> ___I will pay all cost for grading, drilling cess pool, and testing which has already been done. Not to exceed $1300.00"

Bills for such grading, drilling cess pool and testing contain a legal description of the subject unimproved property. (CAA pages 84 thru 89)

Such evidence establishes that there

was a contract to transfer the subject real property, names the persons to the contract, and the purchase price. Further, Renn admits in deposition that the word agreement in the signed memo of May 29, 1977, is the contract for purchase of the subject real property. (CAA pages 75 thru 82) Such contract specifies all the terms of the contract and designates a time of performance.

Declarations of attorneys Peter J. Mueller, Scott Kaisler, Roger Woolley, and William E. Chisham establish that Angels cause herein is meritorious. (CAA pages 90 thru 94)

In accord with *Cadenasso v Bank of Italy* (1932) 214 Cal 562, 568-569, 6 P 2d 944, "the rule that a complaint for equitable relief from a prior judgment must allege facts showing that the plaintiff has a meritorious case does not apply where the judgment under attack is void."

The trial court below gave no reason for denying Angel's motion to vacate Void Judgment for lack of Jurisdiction nor any reason for imposing Sanctions pursuant to *CCP §128.5*. (CAA pages 154 & 155)

Since the procedures mandatory for award pursuant to *CCP §128.5(c)* were not followed, the order of sanctions is improper. The trial court may not invoke a statute only in part, but rather must comply with the whole of such statute.

REASON FOR GRANTING WRIT

The reason for granting this Writ is to insure public trust in the protections afforded under the *Fourteenth Amendment of the United States Constitution.*

The Court of Appeal has invoked laches and/or limitations as a basis for not considering whether or not judgment N8598 is void for a lack of jurisdiction even though the law prohibits the invoking of

laches and/or limitations as against judgments void for a lack of jurisdiction. This they do in the name of equity and in unpublished decision. It can not however be equitable to not follow law clearly set forth, nor is it equitable to, in not following law clearly setforth, leave such law as a trap to all those who may seek to rely upon such law as in fact Angels have relied.

This fundamental injustice aside, what are the equitable considerations relied upon to invoke laches? Is judgment N8598 void for a lack of jurisdiction? (No consideration) Is Angel's cause N8598 meritorious? (No consideration) Did Angels have a fair hearing or any hearing at all as to causes 3, 4 and 5? (No consideration) Does defendant Renn profit from his wrongdoing and continue to profit from his wrongdoing, judgment in the amount of $154,331.13 plus interest. (No consideration) Pursuant to defendant

Renn's indemnification of Title Insurance and Trust Company as to case N8598 (CAA page 85), are third parties at risk? (No consideration) In fact, all those considerations which are defined under law as proper and necessary considerations in equity were not considered at all.

Indeed, equal protection under the law must apply to all, or such law must be changed so as not to remain via unpublished decision a trap for other unsuspecting victims.

If the law is the law, if the law is to be respected, if the law is other than a trap to snare unsuspecting victims, this Writ must be granted.

CONCLUSION

This petition should be granted because the Court of Appeal of California, Fourth Appellate District has ruled in such a way as to deprive Angels due process of

law and equal protection under the law provided for in the *Fourteenth Amendment of the United States Constitution*. If the State Court Decision is allowed to stand in hiding it destroys public protection.

Petitioners, Thomas R. Angel and Loretta C. Angel pray that a Writ of Certiorari issue to review the decree of the Court of Appeal.

Respectfully submitted,

Dated: Feburary 15, 1989

Thomas R. Angel

Thomas R. Angel
Petitioner pro se

Loretta C. Angel

Loretta C. Angel
Petitioner pro se

Appendix "A"

SUPREME COURT
FILED

JAN4-1989

Clerk

_____
DEPUTY

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

4th District, Division 1, No. D008095
S007874

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA

IN BANK

ANGEL ET AL.

v.

RENN

Appellants' petition for review DENIED.

LUCAS

_____
Chief Justice

Appendix "B"

COURT OF APPEAL,

FOURTH APPELLANTE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
Stephen M. Kelly,Clerk

OCT 26 1989

Court of Appeal Fourth District

THOMAS R. ANGEL et al.,	)	
	)	
Plaintiffs and Appellants,	)	
	)	D008095
v.	)	
	)	
LOUIS H. RENN,	)	(Super. Ct.
	)	
Defendant and Respondent.	)	No. N8598)
	)	

THE COURT:

The petition for rehearing is denied.

/signed/

KREMER, P.J.

Appendix "C"

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL,

FOURTH APPELLANTE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
,Clerk

OCT 11 1988

Court of Appeal Fourth District

THOMAS R. ANGEL et al.,	)	
	)	
Plaintiffs and Appellants,	)	
	)	D008095
v.	)	
	)	
LOUIS H. RENN,	)	(Super. Ct.
	)	
Defendant and Respondent.	)	No. N8598)
	)	

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey T. Miller, Judge. Affirmed.

Several years ago in an unpublished opinion in Renn v. Angel (Oct. 15, 1985) D001813, we set out the facts underlying this related proceeding as follows:

Appendix "C"

"The instant appeal is the latest in the protracted series of litigations between Renn and Angels which has as its genesis a complaint filed by Angels in 1977 for specific performance of a real estate agreement with Renn to buy property owned by Renn. (Case No. 8598.) The complaint also joined causes of action for fraud, misrepresentation and false promise. At that time, both parties were represented by counsel. The cause eventually went to trial and at the end of Angels' case-in-chief, the court announced its intention to grant nonsuit in favor of Renn on the cause of action for specific performance. Upon Angels' direction, Angels' attorney Kevin Midlam settled the
2 remaining causes of action of the complaint. Thereafter, the court entered a stipulated judgment in which nonsuit on the cause of action for specific performance was granted in favor of Renn and the remaining causes of action were dismissed pursuant to the stipulation of the parties. In consideration for dismissal of the remaining causes of action and Angels' waiver of the right to appeal the judgment and waiver of findings of fact and conclusions of law, Renn executed a promissory note for $2,000 to Angels.

"Then Angels, through new counsel, attempted to have the stipulated judgment and settlement agreement set aside under Civil Code section 473 on grounds they had not authorized their attorney Kevin Midlam to accept the promissory note. On appeal from the order denying the motion, this court affirmed the judgment. Angels twice petitioned this court for rehearing and petitioned for hearing at the California Supreme Court. The petitions were denied as were several writs. The United States Supreme Court also denied a petition for

writ of Certiorari. Thus presumably ended case No. 8598.

"Undaunted, however, Angels returned to the lower court and filed another action, case No. N14705, to set aside the judgment in case No. 8598 for extrinsic fraud. The basis of the claim of extrinsic fraud was Angels had not authorized Attorney Kevin Midlam to accept the proposed settlement agreement. They also claimed Midlam's performance at trial was so bad it had to be purposeful and therefore constituted fraudulent conduct. Angels contended the only excuse for Midlam's poor trial performance was he was bribed by Renn. The trial court granted summary judgment in favor of Renn on res judicata grounds and for failure to state any facts in their moving papers and declarations to support the claim Midlam was paid to lose the lawsuit (case No. 8598). Angels appealed the grant of summary judgment to this court. We affirmed the judgment and imposed sanctions against the Angels for abuse of appellate process. (See 4 Civ. No. 24901, filed Jan 24, 1983.)

"Undeterred, Angels again sought to set aside the original judgment in case No. 8598 raising many of the same issues previously raised in earlier proceedings. Denial of the motion was accompanied by an order imposing sanctions under Code of Civil Procedure section 128.5. Angels filed a motion for reconsideration of the order denying the motion to set aside the judgment. The motion was denied and additional sanctions were imposed. Angels appealed. The appeal was temporarily dismissed for Angels' failure to pay sanctions previously ordered in 4 Civ. 24901. When Angels then paid the sanctions, the appeal was reinstated. This court affirmed the judgment noting

> the appeal made the same contentions twice rejected by us in the two prior appeals. We imposed $1,000 in sanctions against Angels stating 'Enough is enough. This appeal is frivolous.'" (4 Civ. No. 31142, p. 4.)

Still not deterred, the Angels return. Again they seek to overturn the 1978 judgment. This time they seek equitable relief. They now contend the judgment is void for lack of jurisdiction. They argue the court lacked jurisdiction because it ordered a settlement knowing they had not accepted its terms. They also charge the court "orchestrated the falsification of the reporter's transcript in an effort to ~~conceal~~ the truth of what had actually taken place."

A court may grant relief under its inherent equitable power if, due to fraud of the opponent or by his own mistake, the aggrieved party has been deprived of a fair adversary hearing. (DeMello v. Souza (1973) 36 Cal.App.3d 79, 85; Hammell v. Britton (1941) 19 Cal.2d 72,

82-83.) Assuming arguendo entry of the settlement in 1978 was unjust and equitable relief would be appropriate, "the aggrieved party in addition must show a satisfactory excuse for not having made his claim or defense in the original action and diligence in seeking relief after discovery of the facts." (DeMello v. Souza, supra, 36 Cal.App.3d at p. 85.)

Here, ten years have passed since the alleged extrinsic fraud. The Angels have time after time challenged the judgment. If, as they allege in their present briefs, they have never raised the issue of lack of jurisdiction, having provided no excuse for failing to do so, they have not acted with diligence after discovery of the facts. For this reason alone, the trial court did not err in denying equitable relief.

The Angels also contend the trial court erred in imposing sanctions. They argue the court failed to describe in detail the

circumstances justifying the order. However, because they drafted the order, the failure to specify details is invited error which the Angels are estopped from raising. (See Abbott v. Cavalli (1931) 114 Cal.App. 379, 383.)

The judgment is affirmed.

/signed/

KREMER, P.J.

WE CONCUR:

/signed/

WIENER, J.

/SIGNED/

BENKE, J.

Appendix "D"

FILED
,Clerk

MAY 12 1988

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,
NORTH COUNTY DISTRICT

Thomas R. Angel & Loretta C. Angel, Plaintiffs	Case Number N8598
vs.	ORDER DENYING MOTION TO VACATE VOID JUDGEMENT FOR LACK JURISDICTION and FOR EQUITABLE RELIEF FROM VOID JUDGEMENT [CCP 473 and 1916]
Louis H. Renn Defendant.	

The motion of Thomas R. Angel and Loretta C. Angel for an order to vacate Void judgment for lack of jurisdiction and for equitable relief from Void judgment was determined May 2, 1988 by the court, and court decision was obtained telephonically. Plaintiffs represented themselves; defendant was represented by counsel Philip Burkhardt.

Upon proof made to the satisfaction of the court that the motion ought to be denied, and defendant receive sanctions in

the amount of $300.00,

IT IS ORDERED that the motion be, and hereby is, denied and defendant is to receive sanctions in the amount of $300.00.

DATED: May 12, 1988

/s/ JEFFREY T. MILLER

Judge of the Superior Court

Appendix "E"

FILED
,Clerk

OCT 19 1978

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY JUDICIAL DISTRICT

THOMAS R. ANGEL & LORETTA C. ANGEL, Plaintiffs,	CASE NO. N 8598
vs.	JUDGMENT CCP §631.8
LOUIS H. RENN, MILDRED M. RENN, and DOES I through V, inclusive, Defendants.	ENTERED OCT 20, 1978 Judgment Book 1154 Pg. 483

The above-entitled action having come on regularly for trial on September 26, 1978, before the Honorable Charles W. Froehlich, Judge, Department C of the Superior Court in the State of California for the County of San Diego, North County Branch, plaintiffs appearing by their attorney, Russell J. Clark, a jury having been duly waived and evidence, both oral and documentary, having been introduced; plaintiff having rested his case,

defendant having moved the Court for a judgment pursuant to Section 631.8 of the Code of Civil Procedure, and the Court being fully advised and the matter having been submitted,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the motion for judgment of nonsuit in favor of defendants Louis H. Renn and Mildred M. Renn be and the same as hereby granted in favor of said defendants on the first and second causes of action only.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED pursuant to stipulation of the parties hereto entered in open court that the third, fourth, and fifth causes of action be dismissed, that in consideration for such dismissal and plaintiffs' waiver of findings of fact and conclusions of law and their right to appeal this judgment on the first and second causes of action, defendants agree to pay plaintiffs the sum of $2,000 forthwith in the form of a note

secured by third deed of trust on the property which is the subject of this litigation. Said note to bear interest at the rate of ten percent (10%) per annum all due and payable within one year of the date hereof or upon sale of the subject property, whichever occurs first. Said trust deed to be of the standard form as utilized by commercial lending institutions in the County of San Diego. Said payment is as a matter of compromise only between the parties and shall, not be construed as an admission of any wrongdoing by the defendant. It is further agreed that each party shall bear their own cost of suit incurred herein.

DATED: OCT 19, 1978

/s/ Charles W. Froehlich

Judge of the Superior Court

IN THE SUPREME COURT OF THE
UNITED STATES

CASE NUMBER _____

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013a & 2015.5)

4th Civil No. D008095
SUPERIOR CT N8598

I, Tom Angel Jr. declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am Residing in the County of San Diego, California, within which county the subject mailing occurred. My Residence address is Post Office Box 753-- Rancho Santa Fe, Ca. 92067. I served the within CORRECTED PETITION FOR WRIT OF CERTIORARI: An original and 39 copies on the United States Supreme Court as follows: Clerk, U.S. Supreme Court, Washington, D.C. 20543.

Also true and correct copies of the document filed in the cause is affixed by placing three copies thereof in a separte envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Philip Burkhardt (Opposition Counsel)
P.O. Box 1369
Rancho Santa Fe,
California 92067

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at Rancho Santa Fe, CA on Feburary 15, 1989. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feburary 15, 1989, at Rancho Santa Fe, California.